

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WILLIE LEE JEFFERSON,

Plaintiff,

vs.

ART VOGT, et al.,

Defendants.

3:04-CV-00687-LRH (VPC)

ORDER

Presently before this court is Plaintiff Willie Jefferson's ("Plaintiff") Objection to the Magistrate Judge's Order to Docket No. 64 (#68¹). Defendants Art Vogt, Ted D'Amico, Mike Budge and James Baca ("Defendants") have filed an opposition (#73). Plaintiff has replied (#77). Also before the court is Plaintiff's Objection to Magistrate Judge's Order of Docket No. 64 (#70). Defendants have filed an opposition (#75), to which Plaintiff has replied (#81). Additionally, before this court is Plaintiff's Motion for Reconsideration (#72). Defendants have filed no response. Further, before this court is Plaintiff's Motion to Deem Defendant's Non-Response to Plaintiff's Motion for Reconsideration as Consent to Granting the Same (#95). Defendants have filed an opposition (#102), to which Plaintiff has replied (#108). Moreover, before the court is Plaintiff's "Emergency" Motion for Disqualification-Recusal (#104). Defendants have filed an opposition (#111), to which Plaintiff has replied (#114). Plaintiff has also filed an Objection to Magistrate Judge's Minute Order of Docket No. 117 (#118). Defendants have filed an opposition (#119), to which no reply has been filed. Finally, before the

¹ References to (#XX) refer to the court's docket.

1 court is Plaintiff's Motion for Emergency Stay (#120). Defendants have filed an opposition
2 (#122), to which no reply has been filed.

3 When Plaintiff filed his Objection to the Magistrate Judge's Order to Docket No. 64
4 (#68), he served an incomplete and unintelligible copy on Defendants. Plaintiff's motion
5 substantially differed from what was filed in court. Plaintiff served his objection out of order,
6 incomplete, with misleading page numbers, without a signature or certificate of service, and with
7 a note to Defendants' attorney stating "Geddes how do you like me now, stupid as[s] dog. [H]ave
8 fun figun [sic] out what is what." Defs.' Opp'n to Pl.'s Objection to the Mag. J.'s Order of
9 Docket No. 64 (#73), Ex. B. Plaintiff's actions demonstrate bad faith.

10 Fed. R. Civ. P. 5(a) requires opposing parties to serve a complete copy of the motion at
11 bar upon the opposing party. It is an inherent power of the court to strike a motion that has not
12 been served in accordance with the Federal Rules of Civil Procedure. *See Hambleton Bros.*
13 *Lumber Co. v. Balkin Enter., Inc.*, 397 F.3d 1217, 1226 (9th Cir. 2005) (court granted a motion
14 to strike where the filing of such paper did not conform to the court's procedural requirements);
15 *see also Leong v. Potter*, 347 F.3d 1117, 1125 (9th Cir. 2003) (district court properly enforced its
16 procedural rules when it granted a motion to strike a request that was improperly filed with the
17 court). Plaintiff's motion was in bad faith and improperly served. It is therefore within the
18 court's power to strike Plaintiff's motion.

19 Plaintiff's Objection to Magistrate Judge's Order of Docket No. 64 (#70) objects to the
20 Magistrate Judge's ruling denying Rule 11 sanctions against Defendants for filing a notice of
21 non-opposition. In reviewing a non-dispositive ruling of a magistrate judge, the district court
22 shall use a "clearly erroneous" standard. 28 U.S.C. § 636(b)(1)(A) (2005); *United States v.*
23 *Abonce-Barrera*, 257 F.3d 959, 968-969 (9th Cir. 2001). A notice of non-opposition is an
24 acceptable and routinely used procedure. It notifies the court that Defendant has received
25 Plaintiff's motion and does not intend to file an opposition. *See, e.g. Paracor Fin., Inc. v. Gen.*
26 *Elec. Capital Corp.*, 96 F.3d 1151, 1167-1168 (9th Cir. 1996) (recognizing a notice of non-
27 opposition as an acceptable filing). Accordingly, there are no grounds for Rule 11 sanctions
28 based on such a filing.

1 Plaintiff's Motion for Reconsideration (#72), Plaintiff's Motion to Deem Defendant's
 2 Non-Response to Plaintiff's Motion for Reconsideration as Consent to Granting the Same (#95),
 3 Plaintiff's "Emergency" motion for Disqualification-Recusal (#104), and Plaintiff's Objection to
 4 Magistrate Judge's Minute Order of Docket No. 117 (#118) are all motions requesting judicial
 5 recusal. Plaintiff's motions are based on his belief the court is biased against him and are
 6 predicated upon previous rulings against him. Adverse previous rulings are not sufficient
 7 grounds for a judge to recuse himself. *Liteky v. United States*, 510 U.S. 540, 556 (1994); *see also*
 8 *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1079 (9th Cir. 1999). Further, the issue of recusal has
 9 already been decided by this court (#66). Plaintiff's current motions offer no new substantive or
 10 legal justification for recusal. Thus the court sees no reason to recuse itself or Magistrate Judge
 11 Cooke in this matter.

12 Along with requesting recusal of the judges presiding over this matter, Plaintiff has
 13 requested a stay of these proceedings. It is an inherent power of the court to manage its docket
 14 and grant a stay of proceedings. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Plaintiff's
 15 Motion for Emergency Stay (#120) offers no basis to justify a stay in these court proceedings.
 16 Plaintiff fails to show how a stay will promote judicial economy or prevent inequity to the
 17 Plaintiff. Plaintiff also fails to show that denial of his motion will result in prejudice.

18 Finally, Plaintiff is put on notice that should he continue to use vulgar and profane
 19 language in the motions and documents he presents to the court, such motions and documents
 20 will be stricken and that such conduct could lead to dismissal of his action herein.²

21 IT IS THEREFORE ORDERED that Plaintiff's Objection to Magistrate Judge's Order to
 22 Docket No. 64 (#68) is STRICKEN.

23 IT IS FURTHER ORDERED that Plaintiff's Objection to Magistrate Judge's Order of
 24 Docket No. 64 (#70) is DENIED;

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 26 ² Examples of such language can be found in Plaintiff's Motion to Extend Time
 27 Regarding Discovery (#92) at 10, and Plaintiff's Opposition to Defendant's Motion for Leave to
 28 File in Camera Documents in Support of Defendant's Motion for Summary Judgment (#93) at
 13, 14.

1 IT IS FURTHER ORDERED that Plaintiff's Motion for Reconsideration (#72) is
2 DENIED;

3 IT IS FURTHER ORDERED that Plaintiff's Motion to Deem Defendant's Non-Response
4 to Plaintiff's Motion for Reconsideration as Consent to Granting the Same (#95) is DENIED;

5 IT IS FURTHER ORDERED that Plaintiff's "Emergency" Motion for Disqualification-
6 Recusal (#104) is DENIED;

7 IT IS FURTHER ORDERED that Plaintiff's Objection to Magistrate Judge's Minute
8 Order of Docket No. 117 (#118) is DENIED;

9 IT IS FURTHER ORDERED that Plaintiff's Motion for Emergency Stay (#120) is
10 DENIED.

11 DATED this 26th day of June, 2007.



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15 LARRY R. HICKS
16 UNITED STATES DISTRICT JUDGE
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